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Immunities and issues under discussion after Trump v.
United States**

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**Presidential and individual criminal responsibility.
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Abstract: The present paper addresses the Trump v. U.S. case, questioning presidential immunities and criminal liability. The effects of the Supreme Court's ruling in Trump's case, as well as his reelection as President, have raised many issues under discussion, both from a constitutional perspective and regarding the immunities enjoyed presidents in the American system. The dissenting opinions of judges have allowed us to adjudicate and reach unresolved arguments, not so much regarding immunities as the presidential and individual liability of the re-elected President Trump.

Keywords: Trump v. U.S.; criminal responsibility; executive power; immunity; separation of powers; special counsel.

Introduction

The present paper deals with the re-election of the former American president after his criminal conviction. Trump's case after the November 2024 election was an example of the US constitutional law, given his impeachment by the House of Representatives, which voted to terminate his term. Previously, Andrew Johnson in 1868 and Bill Clinton in 1998 did not seek a second term after impeachment was instituted against them.

Donald Trump was the first president to receive a criminal conviction. The criminal case involved a former pornographic actress named “Stormy Daniels”. Trump was convicted in New York State of falsifying campaign records and paying a sum of money to Stormy Daniels who had an extramarital affair to prevent the 2016 election from being publicized.¹

The conviction was finalized on 10 January 2024. It has subsequently been remanded to the Supreme Court on 1st July, based on presidential immunity, which was invoked by the former president in the federal lawsuit alleging interference with the election process.² The federal proceedings in the District Court of Columbia raised the immunity argument that the Supreme Court relied on.

¹The People of the State of New York v. Donald J. Trump, New York Supreme Court, IND-71543-23, 30 May 2024: https://www.nycourts.gov/LegacyPDFS/press/PDFs/BlancheLaw_112024.pdf Accessed on 18.09.2025.

²Donald J. Trump v. United States, 603 U.S. 593 (2024): <https://supreme.justia.com/cases/federal/us/603/23-939/> Accessed on 18.09.2025.

The Special Counsel Jack Smith, appointed on 18 November 2022, by the Attorney General Merrick Garland,³ did not prosecute the case, citing a previous opinion from the Department of Justice that criminal charges against a sitting president could not be brought.⁴ The criminal case was initiated in Florida by the same prosecutor, and the case was based on material stolen from the former president after his departure from office in January 2021.⁵ The considerations were varied, and the ruling on the criminal proceedings against Trump was contested.

The constitutional basis and the Supreme Court's decision in Trump v. U.S. have prompted discussion about the boundaries of presidential accountability, as noted by judges and framed in terms of an alteration to a system based on checks and balances along with the form of American presidential government (Hasen, 2023).⁶

The indictment against Trump in the District of Columbia also yielded rulings from the district court and the appellate judge,

³Department of Justice Order No. 5559–2022: <https://www.justice.gov/archives/sco-smith> Accessed on 18.09.2025.

⁴United States v. Donald J. Trump, 1:23-cr-00257, (D.D.C. 25 Nov 2024) ECF No. 281: <https://www.courtlistener.com/docket/67656604/united-states-v-trump/> Accessed on 18.09.2025.

⁵United States v. Donald Trump, 24-12311, (11th Cir. 25 Nov 2024) ECF No. 79: <https://www.courtlistener.com/docket/68955302/united-states-v-donald-trump/> Accessed on 18.09.2025.

⁶Hasen affirms that: “(...) federal indictment just handed down by special counsel Jack Smith (...) perhaps the most important indictment ever handed down to safeguard American democracy and the rule of law in any U.S. court against anyone (...)”.

with the exception of functional immunity for acts performed in the exercise of one's office. Presidential immunity through constitutional scrutiny confronts the majority of judges with dissenting opinions that have contested a principal argument based on their decision.

The types of acts identified by the court have allowed us to argue that the judges provided conduct that is alleged to be inconsistent with the indictment of the dissenting judges. Admissibility for evidentiary purposes and prosecution of conduct differs from that of official duty, and the court holds that the documents are covered by functional immunity.

The connection with impeachment and criminal prosecution was rejected by the Supreme Court. It is noted that this decision has influenced the exercise of presidential powers for the coming years, favoring the possibility of contextualizing the majority's decision to a phase in American constitutional history demonstrating the balance between the various bodies in the presidential form of government and the tendency of the legislative body to respect the judicial branch of power.

Interfering with the electoral process. Functional immunity and the role of special counsel

On 1st July 2024, the U.S. Supreme Court ruled in favor of a criminal case brought in the Federal District Court for the

District of Columbia by Special Counsel Jack Smith. On 1st August 2023, four charges were indicted against Trump for conduct related to the celebration of the 3 November 2020, election, the certification of the votes cast by the Electoral College, and the related sanctioning of Joe Biden's election on 6 January 2021.

The charges against Trump were based on federal law and interference with the performance of government functions as well as with obstruction and with the conduct of proceedings against the former president and the attempt to limit the right of the Constitution and federal law was now official.⁷

The former president knowingly made false allegations of election fraud in order to persuade state legislators and officials responsible for the election process to change the vote count and the outcome in his favor. Trump, along with a group of individuals, organized fake delegations of presidential electors to seven states so that the fake electoral certificates could be transmitted to the vice president and to other federal government officials, counted in the election certification process, which took place on 6 January 2021.

The former president and his accomplices attempted to pressure the Department of Justice so that officials conducted sham investigations into election fraud and sent a letter to seven states,

⁷United States v. Trump, 1:23-cr-00257, (D.D.C. 01 Aug 2023) ECF No. 1

informing the department of relevant circumstances regarding the impact of the outcome on the election.

Trump attempted to convince Vice President Mike Pence to take a stand at the certification proceedings scheduled for January 6th. Trump argued that he knowingly repeated false allegations of election fraud. The crowd of supporters, along with the vice president, could alter the election results, thus reaching the congressional headquarters to obstruct the certification of the electoral college vote.

Protesters surrounded the Capitol and forced their way into the congressional headquarters, causing the proceedings to be suspended and the certification of the vote to take place. Thus, Trump attempted to exploit this situation and the false allegations of election fraud by attempting to persuade members of Congress to postpone the certification of the vote.

On 5 October 2024, the grand jury's indictment and the filing of a motion to dismiss against the former president were based on charges attributable to a core set of official duties. The conduct fell within the outer limits of the relevant presidential functions. They enjoyed complete functional immunity, which respected criminal liability. The goal was to allow the president to fulfill his duties without hesitation.

Trump's procedural argument was rejected by the district judge, who held that the silence regarding the constitutional text in

question was interpreted as a lack of immunity. This interpretation was concerning the structure of the government. The independence of the executive branch respected other powers, and historical circumstances demonstrated the consolidation of a sphere of irresponsibility for the president.⁸

No benefits were noted in the Federal Court of Appeals for the District of Columbia in the Trump case, as the judge upheld the district court's ruling and argued the principle of separation of powers by excluding judicial review of presidential acts of a ministerial nature (Tuomala, 2015).⁹

Trump appealed to the Supreme Court and granted that certiorari was limited to the former president, who enjoys presidential immunity since the criminal prosecution concerns conduct related to official acts during his term.¹⁰

The Supreme Court reversed the lower courts' decisions and returned the district court's records until the admissibility of the case was assessed.¹¹

The arguments of the majority as well as the dissenting opinions focus on the legitimacy of the appointment of Special Counsel Jack Smith. His appointment by Attorney General Merrick Garland was not a matter of concern. Trump was in office and

⁸United States v. Trump, 1:23-cr-00257, (D.D.C. 01 Dec 2023) ECF No. 172.

⁹United States v. Donald Trump, 23-3228, (D.C. Cir. 6 Feb 2024) ECF No. 1208593677. Marbury v. Madison, 1 Cranch 137, 165-166 (1803): <https://supreme.justia.com/cases/federal/us/5/137/> Accessed on 18.09.2025.

¹⁰No. 23-939, Trump v. United States (23A745), 601 U.S. 28 February 2024.

¹¹Trump v. United States, 603 U.S. 593 (2024).

initiated an investigation into the conduct of Special Counsel Robert S. Mueller, who had been appointed by the then Attorney General, working under Rod Rosenstein, who was at the forefront of the Russia investigation.

Judge Clarence Thomas, through his opinion in *Trump v. U.S.*, and other judges on the panel, weighed in on the legitimacy of the Special Counsel's appointment. The relative act is not based on a provision of federal law.¹²

In this regard, Thomas did not challenge the Attorney General's appointment power in an abstract manner and acknowledged that he relied on an exception relating to the president's appointment of inferior officers, under Article II, Section 2, Clause 2 of the US Constitution.¹³

Judge Thomas emphasized that this appointment power also existed for offices not established by Congress itself. The absence of federal legislation establishing the position of special counsel, even if only for the purpose of electing a special counsel, paralyzed the Attorney General's power of appointment.¹⁴

Judge Thomas interrupted the pending proceedings and led to the special counsel's unconstitutionality and the appointment of

¹²*Trump v. United States*, 603 U.S. 593 (2024), Thomas J., Sep. Op.

¹³“(…) Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments (...)”.

¹⁴*Trump v. United States*, 603 U.S. 593 (2024), Thomas J., Sep. Op., 6-8 (Slip. Op.).

a special counsel.¹⁵ Thomas's interpretation was not supported by other members of the bench, but the federal judge adhered to the widespread trend toward special counsels.

Cannon, who was appointed by Trump himself, has been criticized for his handling of the proceedings pending before him (Aftergut, Tribe, 2024; Rosenzweig, 2024; Feuer, Sullivan, 2024). Special counsel David C. Weiss, appointed by Garland, has been criticized for the criminal conduct committed by President Biden's son,¹⁶ which was subject of dispute (Oliver, 2023).

The difficulty in reinstating a heated debate regarding the role of special counsel demonstrates the prevailing view against the constitutional illegitimacy of this institution. Judge Scalia, in his dissenting opinion, argued in a case relevant to the Ethics in Government Act of 1978¹⁷ that a provision that delegated investigative power to a body separate from the executive branch, not subject to removal by the president, was unconstitutional.¹⁸

The repeal of the 1999 federal legislation that supported the appointment of Robert Mueller as special counsel was unlawful

¹⁵United States v. Trump, 9:23-cr-80101, (S.D. Fla. 15 July 2024) ECF No. 6

¹⁶Department of Justice Order No. 5730–2023.

¹⁷“(…) Act to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes (…).” Pub. L. 95–521, 92 Stat. 1824.

¹⁸Morrison v. Olson, 487 U.S. 654, 697–734 (1988): <https://supreme.justia.com/cases/federal/us/487/654/> Accessed on 18.09.2025.

due to the absence of a law addressing the matter (Calabresi, Lawson, 2019). There were also discussions about regulating the appointment of special counsels that interfered with the separation of powers principle, which was part of the existing provisions of the Ethics in Government Act.

Criminal liability and presidential immunity

The arguments advanced by the former president on the issue of criminal immunity were made before the Supreme Court, and the decision was adopted by a majority vote of the court following the nominations of Biden (Jackson) and Trump (Gorsuch, Kavanaugh, and Barrett).

The majority opinion was written by the Chief Judge John G. Roberts, who did not intend to mediate the matter, which he viewed as a political opportunity to legitimize the Supreme Court, which was leaning toward Trump (Biskupic, 2024; Kantor, Liptak, 2024).

Paragraph 2 of the dissenting opinion of judge Clarence Thomas and judge Amy Coney Barrett, which affirmed the decision due to its implications for the admissibility of evidence related to presidential conduct, already demonstrates the reservation regarding the immunity granted to the president from the majority opinion. Judge Sonia Sotomayor, in a dissenting opinion, took a position that was accepted by judges Elena

Kagan and Ketanji Brown Jackson, regarding presidential immunity and its effects on the balance of the American form of government.

The framing of the president's role and the related reasoning justified the recognition of a sphere of immunity from criminal liability for acts committed in the exercise of office. These reasonings contrast with arguments that include the dissenting opinions regarding immunities that asserted the constitutional basis for the former president, which corresponded to the model of criminal liability in the American legal system.

Exercise of official powers, public interest, prosecution of crimes, and the figure of the American president

The American president enjoys absolute immunity for acts that fall outside the scope of his official duties. The Supreme Court ruled in the *Nixon v. Fitzgerald* case that the president was not civilly liable for the exercise of his duties as president.¹⁹

The special prosecutor and the former president were covered by criminal immunity. The majority opinion affirmed that the constitutional structure was based on the separation of powers and on the nature of presidential powers. Former presidents enjoyed immunity for official acts during their term of office. Immunities were absolute for presidential acts and they

¹⁹457 U.S. 731, 756 (1982): <https://supreme.justia.com/cases/federal/us/457/731/>
Accessed on 18.09.2025.

extended to other official acts.

The regime of liability for the acts indicted allows for arguments that Roberts sees as justifying the possibility of establishing a regime of functional immunity for the president who extends the term of his presidential term. The attributions as a foundation in the constitutional text and the discussion of the president's position regarding the separation of American powers of the Chief Judge referred to the acts that established the jurisdiction between the executive and Congress.

The majority cited recent dicta and decisions regarding the powers and limits of the presidential office due to the nature of this office and the attributions that must be exercised to ensure the implementation of the content of the laws in a power that the constitution based and concentrated, as a monocratic, diffused body.²⁰

The Court has taken a position regarding the risks of exercising its powers and the functioning of the federal government. This reasoning is historically based on the constitutional tradition of

²⁰Trump v. Mazars USA, LLP, 591 U.S. 848, 868 (2020): <https://supreme.justia.com/cases/federal/us/591/19-715/> Accessed on 18.09.2025. Clinton v. Jones, 520 U. S. 681, 712 (1997), Breyer J., Conc. Op.: <https://supreme.justia.com/cases/federal/us/520/681/> Accessed on 18.09.2025. Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 197, 204, 223-224 (2020): https://www.supremecourt.gov/opinions/19pdf/19-7_n6io.pdf Accessed on 18.09.2025. Alexander Hamilton in The Federalist Papers, no. 70 (The Executive Department further considered): <https://billofrightsinstitute.org/primary-sources/federalist-no-7/>; Accessed on 18.09.2025. 30 Nixon v. Fitzgerald, 457 U.S. 731, 749-756 (1982); Clinton v. Jones, 520 U.S. 681, 694 (1997), Breyer J., Conc. Op cit.

the separation of powers and on presidential immunity. Immunity has been noted in the past in civil suits against Nixon and Clinton.

Liability for damages arising from acts outside the scope of the president's official responsibility has been excluded. This does not prevent judicial authorities from requesting the president to hand over documents and access the content of communications, nor from the presumption that presidential communications are conducted within a privileged sphere.²¹

In this spirit, Roberts argued that the criminal prosecution of the president for official acts represented the search for evidence that, in its possession, runs the risk of hindering the exercise of presidential functions, and justifying the immunity from civil liability that is recognized in many cases.

The majority recognizes the amount of damages in civil proceedings, despite the fact that such a position undermines the exercise of presidential functions and the functioning of the federal government. This impedes executive action and the exemption from criminal liability, which does not extend the term of office.

The Chief Judge recognizes criminal law, remedying thus the harm caused to the public on a collective level. This is a reasoning of the exigencies of executive action that balances the

²¹United States v. Nixon, 418 U.S. 683, 703, 707.

compelling public interests in the enforcement of its own law. The majority concludes the principle of separation of powers by requiring its own acts to provide an external framework for presidential functions and the presumption of immunity from criminal liability.

The immunity argument relies on the president's official duties and conduct that is burdened by precautions as a guarantee, thus mitigating the risk of criminal prosecution. This presumption requires the investigating authority to demonstrate that the conduct is subject to a criminal offense that does not pose a threat to the authority and functions of the executive branch.

The standard, formulated in general terms, is apparent from the broad interpretation that the court implicitly uses in the *Trump v. U.S.* case.

Criminal immunity in the US constitution. Unreasonableness and extent of the budget

Presidential immunity and the dissenting opinion of judge Sotomayor are replete with thoughtful criticisms of the conduct Trump was accused of, as well as the formulation of absolute immunity, which granted acts committed within the exercise of fundamental constitutional powers to the president in an expansive manner beyond any legal and defensible limit.

The dissenting opinion affirmed the assessment of the extension of presidential powers within a constitutional framework.

Judge Sotomayor failed to address the constitutional provision for any form of immunity from criminal liability for the president. This is a significant omission. The conclusion's rationale is that the immunities granted to elected public office seek to protect the free exercise of office for members of Congress,²² a guarantee not afforded to the president.

The constitutions of the American states ratify the Constitution and contain express clauses exempting governors and founding fathers from criminal liability who did not consider the provision in the text of the Constitution. A general position held that the majority opinion and the provision governing impeachment proceedings provide for a criminal response to the former president, regardless of the outcome of a congressional proceeding, which is political in nature.²³

Judge Sotomayor, through her opinion, brought to light the discussion surrounding presidential responsibility, thus distinguishing the figure of the executive branch that was taking

²²Speech or Debate Clause, Art. I, §6, cl. 1 (“(...) shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place (...”).

²³Impeachment Judgment Clause, Art. I, §3, cl. 7 (“(...) Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit (...) the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law (...”).

shape, emphasizing:

“(...) afterwards be liable to prosecution and punishment in the ordinary course of law (...)”.²⁴

The relevance of “afterwards” in the text of the impeachment judgment clause underscores that judge Sotomayor's dissenting opinion highlighted James Madison's intervention at the Constitutional Convention, an opportunity to discuss the guarantees and criminal liability of the executive branch. The testimonies of the delegates participating in the convention, as well as commentators, agree with the configurability of this type of immunity, which confirms the sources and the entry into force of the Constitution.²⁵

The majority of the historical material that Roberts has qualified allows judge Sotomayor to discuss with conservative judges the history that the court has made. Historical experience underscores the nonsense of Gerald Ford's support for Richard Nixon after the Watergate scandal, given that, from a criminal standpoint, he was prosecuting acts committed while in office. The investigation documents also implicated Reagan in the weapons case in the Iran case.

The reconstruction of the regime of presidential criminal responsibility during Trump's second impeachment trial and the

²⁴The Federalist Papers, no. 69 (The Real Character of the Executive): https://avalon.law.yale.edu/18th_century/fed69.asp Accessed on 18.09.2025.

²⁵Judge Joseph Story, Commentaries on the Constitution of the United States, Boston, Mass., 1873, IV ed., Book III, Cap. X (The Senate), §§ 781-783.

Senate's decision not to approve the related articles of impeachment did not prevent the former president from responding to such conduct through the ordinary mechanisms of American justice.

The balance of the president's interest in adequately and decisively fulfilling his mandate to the public, which is held accountable for his unlawful conduct, leads judge Sotomayor to disregard the immunity regime within both civil and criminal law.

The judge argued that the criminal risks required civil litigation with a broad range of parties. The sanctions threatened the criminal process, which clearly and punitively provided safeguards, such as the requirement for the Department of Justice to provide adequate evidence sufficient for indictment by a grand jury. The exceptions to unconstitutionality were the incriminating circumstances applied to the president.

The ordinary justifications provided for criminal law and held that the prosecutor was adequate to a system of appeals by the Supreme Court itself. The majority's fears regarding the former president's exposure to prosecution and convictions for the relevant charges are unfounded.

The holding of the presidential office seems to reflect the perception that they are subject to a regime of post-term criminal liability, which has not prevented several presidents

from resolutely exercising their duties. The president authorized and violated federal criminal law. He was confident that he could escape accountability within the scope of the immunity that extended to the end of his term.

Sotomayor held that the public interest underlying the criminal prosecution of the former president was broader than that found in a civil suit brought by a private citizen relying on the perception of a panel that decided the *Fitzgerald v. Nixon* case. This is a decision that is unlikely to produce results at a criminal level. It is also difficult to argue that the majority opinion prevents the executive branch from pursuing violations of federal criminal law, and even for the executive branch itself as the holder of measures aimed at strengthening the independence of the executive branch.

Sotomayor was concerned that the court's conservative supporters of the separation of powers principle were leading the judges, by majority vote, to adopt a decision that ignored the separation of powers enshrined in the Constitution.

Presidential immunity and inconsistencies with American criminal liability

The dissenting opinions of judges Jackson and Sonia Sotomayor supported the decision altering presidential criminal liability. Immunity implied the assertion of an inapplicability in criminal

law that made it difficult to reconcile the principle of all those who held public office and were subjects of the law, thus challenging the rule of law that constituted a fundamental guarantee of popular sovereignty.²⁶

In this spirit, Ketanji Brown-Jackson highlighted individual responsibility within the criminal law as well as a series of provisions based on various assumptions. Each criminal provision is part of a general and perimetric framework established by the legislature, where federal prosecutors initiate criminal proceedings, believing the violation of that provision to be justified by an indictment before a grand jury.

Once a proceeding is initiated, the burden falls on the prosecutor to produce the relevant evidence to support a finding, given that the defendant's guilt raises every reasonable doubt in the jury's mind. The defendant enjoys the presumption of innocence and a series of procedural rights, including due process before a jury, namely, legal representation and the right to cross-examination, as well as the right to the examination of witness testimony.

The defendant asserts the defects in the notification of the relevant proceedings and the unconstitutionality of the criminal provision, which challenges his conduct and establishes the nature of the crime that undermines and invalidates the

²⁶U.S. v. Mine Workers, 330 U.S. 258, 308 (1947), Frankfurter J., Conc. Op.: <https://supreme.justia.com/cases/federal/us/330/258/> Accessed on 18.09.2025. U.S. v. Lee, 106 U.S. 196, 220 (1882): <https://supreme.justia.com/cases/federal/us/106/196/> Accessed on 18.09.2025.

justification provided by law, and elaborates the defenses according to case law. Invoking a justification is not the same thing and has no bearing on immunity. However, it does not preclude the application of the same offense to a person invoking a defense that allows their subject to avoid responding to the relevant criminal conviction.

The presidential liability model alters the traditional one of individual criminal liability and the complex mechanism that establishes the official nature of acts committed by the president, who requires the courts' preventive intervention within the ordinary course of criminal proceedings. This intervention occurs only after the prosecutor decides to pursue criminal proceedings and the jury has determined the guilt of its defendant.

The traditional model of individual liability for a president exculpates conduct and establishes the grounds for a crime that covers the cause justified and provided for by its own law. This justification is acknowledged by the legislature and the body representing popular sovereignty. The presidential liability model and the existence of functional immunity mean that the president exercises his official powers without limits, regardless of whether the law recognizes the justification that complies with the general crime.

The dissenting opinion of judge Jackson allowed to address the

criticisms and consequences that this approach to presidential criminal liability is susceptible to, and raises the separation of powers, as well as the difficulties in ascertaining presidential acts.

(Follows). Presidential acts and criminal immunity

The criminal immunity of the American president is linked to presidential acts based on a constitutional and/or legislative source.²⁷ The presidential act is final and precludes any form of interference with the president's conduct, as well as the content of legislative sources approved by Congress.

Judicial review of the exercise of powers, conferred exclusively on the president by the Constitution, is excluded.²⁸ An exception is made when the president withdraws his or her authority under the Constitution. In reality, he or she acts in this way based on an individual will, which lies outside the authority conferred by his or her own law.²⁹ It is thus determined that presidential conduct within the scope of the president's exclusive authority and discretionary exercise of powers is not subject to review.

The Supreme Court has interpreted the fundamental powers of the executive branch, as demonstrated by its ruling of unconstitutionality during the reconstruction period. Federal

²⁷Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585 (1952): <https://supreme.justia.com/cases/federal/us/343/579/> Accessed on 18.09.2025.

²⁸Marbury v. Madison, 1 Cranch 137, 166 (1803).

²⁹Youngstown v. Sawyer, 343 U.S. 579, 655 (1952), Jackson J., Conc. O.

legislation did not prohibit the use of presidential pardons as evidence for the restoration of individual property rights and the basis of violation under Art. II, §2, cl.1 of the Constitution.³⁰

Similarly, this category of presidential decisions removes the office of members of the administration for presidential nomination. Such a function is attributable to the executive branch,³¹ as well as to the related recognition of foreign states.³²

Roberts concluded that the president enjoys absolute immunity from criminal prosecution for acts that fall within the scope of authority guaranteed by the Constitution. This occurs if the conduct grounds the indictment, which is brought by special counsel and falls within the category of acts.

The court finds and reveals that the acts are merely formal. They provide decisive and precise guidance for lower courts to assess certain conduct within official acts that fall within the external framework of presidential authority. Roberts identifies a series of acts that are subject to an indictment of absolute immunity. We must affirm that the relevant conduct exercised by Trump and against officials of the Department of Justice is the one that invokes the department's authority to persuade state officials to

³⁰U.S. v. Klein, 13 Wall. 128, 139-141 (1872): <https://supreme.justia.com/cases/federal/us/80/128/> Accessed on 18.09.2025: “(...) shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment (...)”.

³¹Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 197, 204 (2020).

³²Zivotofsky v. Kerry, 576 U.S. 1, 32 (2015): <https://supreme.justia.com/cases/federal/us/576/1/> Accessed on 18.09.2025.

appoint presidential electors who favor Trump.

The popular vote was won by Biden, and the threat to remove the attorney general falls within the scope of presidential authority. The Executive Branch continues to have discretion over criminal conduct that involves and pursues the Attorney General's discussions of strategies with other officials within the Department of Justice involved in the implementation of laws. This also includes the scope reserved for presidential powers and the decisions that remove members of the Department of Justice for presidential appointment.

The arguments and the groundlessness of the directives provided to the president have improper objectives. The majority opinion leads to arguments for the distinction between official and unofficial conduct that are not based on findings based on the president's conduct. The risk is oriented towards a challenge that pursues improper objectives. The acts are evident and connected to official duties subject to judicial review and to interests protected by immunity according to an interpretation of Article II of the Constitution.

According to judge Sotomayor's opinion, the configuration of the acts that grant absolute immunity leads to a definition of immunity for acts and to the exercise of official duties. The dissenting opinion and the majority's decision discuss whether the president enjoys immunity for acts that represent the

exercise of fundamental constitutional powers.

The related charge against Trump concerns his conduct of committing fraud, that is, to alter the outcome of the presidential election that is not based on an illegitimate exercise of presidential power recognized by the Constitution.

According to judge Sotomayor's position, an expansion of the scope of definitive presidential powers precludes external interference with criminal liability, which consists in the preparation of fraudulent evidence and the insistence of the Department of Justice to produce a judgment for the criminal proceedings.

A liberal-leaning judge opposes a court decision that seeks to shape the relevant boundaries and immunity that the defendant does not advance. It also concerns the conduct pursued in the event that the established principle of the court intervenes in disputes concerning the separation of powers that border on the decision of questions necessary for the definition of the case.³³

(Follows). Acts that fall within the purview of presidential functions

One of the most controversial points in the Trump v. U.S. case concerned the acts the court connected with the office of president. The majority of the judges were able to characterize

³³Dames & Moore v. Regan, 453 U.S. 654, 661 (1981): <https://supreme.justia.com/cases/federal/us/453/654/> Accessed on 18.09.2025.

the constitutional and legislative provisions governing presidential conduct as official, lacking any direct connection.

Immunity from civil litigation for acts that fall under the control of an external body and outside the scope of an office's duties allowed Roberts, who led the conservative wing, to extend the criminal scope of the regime to presidential irresponsibility and the investigatory authority that is unable to demonstrate persecution of the president as well as the dangers of intrusion into the authority and functions of the executive branch.³⁴

The majority moves on to frame other conduct based on the indictment filed by the special prosecutor, which falls outside the scope of official acts. The review by the district and appellate judges legitimizes and overcomes the presumption of immunity that recognizes a former president's right to demonstrate criminal prosecution for conduct that did not interfere with the independence and proper functioning of the presidential office. The failure to precisely characterize the conduct is based on the indictment. The Supreme Court also appears to be delineating the scope of immunity for official acts of the president of a broad nature.

The conduct and pressure exerted by Trump on former Vice President Mike Pence in the exercise of his constitutional duty were related to the fact that, as President of the Senate, he acted

³⁴Nixon v. Fitzgerald, 457 U.S. 731, 754 (1982).

to certify the presidential electors' votes before the assembled Congress and in joint session to determine the election results. This conduct was based on the refusal to certify the votes cast by the presidential electors of certain swing states and on demanding that the legislatures of these states consider the results of the popular vote in their respective territories.

The Supreme Court, in building a relationship between the president and vice president, emphasized the similarity with the fact that direct popular legitimacy after the passage of the Twelfth Amendment was aligned with the constitutional position of the vice president, who takes over the role of the president.

This framework served the Court's majority to highlight the circumstances surrounding official responsibility. The President and the Vice President thus exercise official conduct. The vice president's authority over the process of certifying the veto and the presidential electors was derived from the Constitution and legislative sources.³⁵

The form of pressure exerted at all levels by Trump, regarding the exercise of a function that fell within the scope of official duties, enjoys presumed immunity. Roberts recognized the vice president's role in the vote certification process, which was not ascribed to the holder of executive power. The incumbent

³⁵Art. II, §1, cl.3; Electoral Count Act of 1887, Pub. L. 49–90, 24 Stat. 373.

president had no role in the voting process beyond the Electoral College. The vice president's duties were specifically defined by Congress with the relevant legislation. The Court reasonably held that the prosecution of such a conduct was not susceptible to the exercise of executive power.

The majority questioned the reasons justifying the application of immunity due to Trump's pressure on the former vice president. The reliance on Congress and the strength of the vice president's authority favored the adoption of a legislative act that broke the Senate's tie-breaking vote. The majority's argument affirmed judge Sotomayor's dissenting opinion, which criticized the court for turning the issue into a contentious one.

The Court's point was the flaw in a logical process. The interpretation of the vice president's role in the certification of the vote was considered to be in the exercise of a ceremonial function (Goldstein, 2023).

The reference to possible disputes regarding the certification of votes does not imply a limit on the discretion in the exercise of one's role. Former vice president Pence's resistance to Trump's pressure for many weeks and during the session of Congress on 6 January 2021, underscored that Congress itself was intervening at the close of the two-year term of the Biden presidency in the maintenance of federal legislation and the rules for the certification of the Electoral College vote.

The relevant Electoral Count Act specified that the former vice president's role in the certification process was of a ministerial nature and that he independently ascertained and/or rejected the vote of a presidential elector, resolving disputes over the validity of votes certified by state authorities and the authority of their holders to the branches of Congress.³⁶ He did not support the interpretation of legislation passed subsequently, which took into account the Electoral Count Act previously enacted by the legislative branch.

The provision referring to the powers of the Senate President differed from the session, which maintained order and the decision to certify votes clearly attributed to the Senate and the House of Representatives. This position is shared with some uncertainty and supported by the majority view that the pressure exerted by Trump on the former vice president was attributable to official duties.

The conduct examined between the Department of Justice and the Vice President is part of a series of pressures exerted by Trump on state officials responsible for certifying the outcome of the popular vote, appointing presidential electors, and recruiting those who serve as presidential electors for the

³⁶U.S. Code §15(b)(1): “(...) otherwise provided in this chapter, the role of the President of the Senate while presiding over the joint session shall be limited to performing solely ministerial duties (...) (2) The President of the Senate shall have no power to solely determine, accept, reject, or otherwise adjudicate or resolve disputes over the proper certificate of ascertainment of appointment of electors, the validity of electors, or the votes of elector (...)”.

Republican candidate.

Trump's lawyers admitted that the conduct also involved private actors representing advance presidential arguments and conducts that are carried out in the exercise of official duties, as well as to protect the integrity of federal elections. They also highlighted support for the intervention pre-established years ago by the former President Ulysses Grant, dating back to 1876 (Simpson, 1992; Foley, 2024; Lessig, 2024).

The special counsel did not rely on a source of presidential power. Individual states were responsible for the process of appointing presidential electors. The Congress regulated the assembly of these electors and verified the legitimacy of the votes cast at the certification site.³⁷

The conduct and the majority of the court remain unbiased. As has been emphasized, the heterogeneous nature and appropriateness of the district judge's assessment of the presumption of immunity for presidential acts are rebuttable in our case.

Trump's conduct and the role of the special counsel, who based the indictment of the former president, were based on statements made in posts published on Twitter in the days before the Senate

³⁷See also: Art. II, §1, cl. 2: “(...) State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress (...)”. Art. II, §1, cl. 4: “(...) Congress may determine the time of choosing the electors, and the Day on which they shall give their votes; which day shall be the same throughout the United States (...)”.

and House of Representatives meetings on 6 January 2021.

The statements regarding the Republican candidate's support in Washington on the day of his own certification and the Electoral College vote translate as a guideline for some states to certify the electors, the alleged power of the former vice president to send the votes back to the presidential electors and to state authorities who were proceeding with a recertification, and the invitation to travel to the seat of Congress to exert pressure on the former vice president to convince him to agree with their strategy.

Before they reached Capitol Hill and the infamous raid on Congress, the behavior of temporary suspension for certification operations led Trump not to go to Congress but to arrange for law enforcement to intervene and not speak publicly for a few hours.

The relative presidential power of extension, an integral part of the president's powers, and the statements made in this regard clearly outlined the external framework of official duties that even presumed immunity afforded. Presidential statements, even legitimate ones, are based on an assessment of official functions that are criminally enforceable.

Roberts affirmed the district judge's assessment, which took into account the presidential statements, the special prosecutor's request for indictment in the general context and the statements

made through the former president's multiple communication channels during those tense moments.

Sonia Sotomayor disagreed with the majority's position, which was based on the irrelevance and distinction between acts enjoying absolute immunity and those covered by presumed immunity.

The liberal judge and the discussion of the exclusion of the possibility of prosecuting a president, unless they pose a threat to the authority and functions of the executive branch, undermine the relative significance of the distinction between categories of immunity and the expansion of the scope of acts covered by presumed immunity.

The president was sufficient and demonstrated the possibility of interfering with the investigation through the exercise of powers, demonstrating presidential conduct that is not part of the official record as establishing the motives for conduct based on the majority's opinions.

This expansion of the scope of immunity for official acts is connected to the marginal and irrelevant scope of the category of unofficial acts. It does not grant immunity as an expression of the president's conduct, but rather as a private citizen.

Judge Sotomayor positioned herself and complained about any form of criminal liability of the president for abuses and powers that were formally vested in his office and in fact pursued

objectives outside his own government.

(Follows). Presidential office and unrelated acts

Another category of acts is that relating to presidential conduct before the Supreme Court, which concerns acts that each president performs outside of his or her duties and official responsibility. The majority demonstrates the lack of a similar criminal regime for acts related to a conduct performed while in office. In this regard, the court held that the president is not immune from liability in his or her capacity as president, but rather exercises his or her presidential duties without fear of liability for acts performed in his or her capacity as president.

The exclusion of this reasoning from the scope of criminal liability as a possibility for criminally prosecuting a president and the related indictment in office for private conduct highlighted Roberts's views in citing a well-established practice of the Department of Justice, which has recognized the principle of separation of powers, which precludes the possibility of criminally prosecuting a president during his or her term. This is a policy that extinguishes proceedings against Trump after his victory on 5 November 2024.

The related documents do not highlight the dissent of a liberal group of the court who preferred to rely on other profiles and arguments on the matter.

Presidential official acts and evidentiary relevance

In the Trump v. U.S. case, it is noted and affirmed that the majority of the judges' rulings are based on the evidentiary admissibility of the relevant presidential conduct. A president is criminally liable after the end of his term for acts unrelated to the performance of official duties. The question of whether official acts, covered by immunity, can be invoked as evidence for the prosecution of unofficial acts, remains open.

In this regard, five judges ruled that the reference to conduct falls within the scope of official duties in the former president's indictments for private acts performed in office. They allowed the prosecutor to invoke such acts before a jury and to admit that the resulting verdict on the guilt of a former president is connected to the performance of official acts, thus proving private conduct without calling and answering official acts, which would undermine the court's functional immunity and the decision itself.

The reasoning behind this position consists of procedural mechanisms that are related to the assumption of evidence and to instructions that the judge provides to his jury for deliberation purposes and with adequate guarantees for the protection of the rights of the accused who is a private citizen.

Contrary to this approach, judge Amy Coney Barrett considered

presidential immunity. The Supreme Court justices appointed by Trump in his first term demonstrate that the court provided input for the characterization of presidential irresponsibility and the immunity and prejudicial nature of a resolution of issues related to the admissibility of criminal cases at the merits stage.

Justice Barrett relied on the dissenting opinion of Sonia Sotomayor, who held this view and stated that presidential immunity for official acts is not related to the need to disclose to a jury the exercise of presidential power for the purpose of prosecuting a private act of the president.

The judge cited bribery as an example, which is punishable by law and the president can prosecute and answer criminally under the Constitution, which does not authorize the assessment of a sum of money in exchange for the adoption of an official act.³⁸ The jury's knowledge of an act adopted under illicit money is excluded as evidence.

Judge Barrett's dissenting opinion is related to procedural mechanisms for each defendant, as well as to judge's ability to exclude presidential acts and the weight of its admission as evidence, which is less than the relative risk of undue prejudice to the exercise of the relevant presidential powers. Such powers sufficiently seek the general admissibility of presidential

³⁸See Art. II, §4: "(...) The President, Vice President and all civil Officers of the United States, shall be removed from the Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors (...)"

conduct as evidence in proceedings of unofficial acts committed by a former president.

Sonia Sotomayor's dissenting opinion appears to have many uncertainties and has been widely criticized. Given that inadmissibility as evidence in court and in reference to the exercise of presidential power connected to official duties, it substantially renders private presidential conduct inadmissible and unprosecutable, which the majority of the court held inapplicable to the immunity granted by official acts.

Judge Sotomayor highlighted official acts to also prove knowledge or intent as a criterion for imputing guilt, which, with malice, resembles an unofficial act. The example provided by the liberal judge is of an utterance relating to an intention that stops costs to an opposing politician who hinders the presidential agenda, causing the death of the political opponent.

The interpretation seems strict for the admissibility of evidence by the majority opinion, rendering inadmissible the presidential declarations of the act that falls under official responsibility and which in practice compromises the guilt of the former president.

Sotomayor's position was also followed by Roberts. She criticized it as contrary to jurisprudence and the expression of freedom of thought. The First Amendment was contrary to criminal prosecution and the exercise of liberty. It did not prevent the initiation of criminal proceedings nor statements that

were relevant to the subjective element of the crime.³⁹

Sotomayor thus highlighted the inconsistency of the majority opinion and emphasized the risk of admitting official acts in court, thus involving the deliberation of jury members who influence the decision due to presidential policy views, as well as the risk of criminal prosecution against the former president for unofficial acts that the court recognized as prosecutable and not deserving of immunity.

Separation of powers, presidential irresponsibility, and supreme court's role

The Supreme Court's ruling on the appeal against Trump filed by the special prosecutor was, in many respects, a victory for the president. The recognition of immunity was broad, and from a formal standpoint, it is presumed that official presidential acts await the appellant's expectations. The initiation and conduct of the case were also temporally linked to the outcome of the 5 November 2024, presidential election.

Trump's re-election and the efforts of special prosecutor Jack Smith to adjudicate the conduct based on the indictment outside the framework of official acts led the Supreme Court to unnecessary adjudicate a criminal case against the incumbent president and to require the special counsel to be aware of the

³⁹Wisconsin v. Mitchell, 508 U.S. 476, 489 (1993): <https://supreme.justia.com/cases/federal/us/508/476/> Accessed on 18.09.2025.

related dismissal of the proceedings, as requested on 25 November 2024, by the district judge, and the related termination of the proceedings.⁴⁰

The Court of Appeals upheld the special counsel's dismissal and the related appeal of the Florida district judge's decision dismissing Trump's indictment for the documents classified as stolen;⁴¹ as well as judge Aileen Cannon's appeal of the decision as a case for discussion and pending for Trump's co-defendants. The Department of Justice published and drafted, from the office of Special Prosecutor Jack Smith and after his resignation, the continuation of the two Trump trials before the special counsel even submitted his resignation to Attorney General Merrick Garland.⁴²

Trump's lawyers sought to challenge the illegality of Smith's appointment as special counsel, as well as the futility of the publication, which was authorized by Florida District Judge Aileen Cannon, with the limitations of interfering in an election proceeding and staying out of the process of leaked documents pending an outcome of the appeal. The Smith report stated that the special counsel who finalized the document could not admit

⁴⁰United States v. Trump, 1:23-cr-00257, (D.D.C. Nov 25, 2024) ECF No. 283.

⁴¹United States v. Trump, 9:23-cr-80101, (S.D. Fla. Nov 26, 2024) ECF No. 677

⁴²Special Counsel Jack Smith, Final report of the special counsel's investigation and prosecutions, submitted pursuant to 28 C.F.R. § 600.8(c), Volume one: the election case, Report on efforts to interfere with the lawful transfer of power following the 2020 Presidential election or The certification of the electoral college vote held on 6 January 2021, www.justice.gov/storage/Report-of-Special-Counsel-Smith-Volume-1-January-2025.pdf. Accessed on 18.09.2025.

sufficient evidence to support and secure a conviction for the defendant in his own judgment.⁴³ The sentencing of Trump and the state's violation of New York's campaign finance laws prompted the Supreme Court, by a majority of five votes to four, to reject Trump's related request:

“(...) the state judge did not proceed with the sentencing because of the Court's decision in *Trump v. U.S.*⁴⁴ (...) On 10 January, Trump was convicted, but without the imposition of a penalty restricting his liberty or financially, even if the unconditional discharge (...) prevented him from exercising certain rights such as the right to vote and the possession of firearms (...)” (Johansen, 2025).

Thus, the former president was convicted in criminal proceedings, and even the first president in office with a criminal conviction is entitled to appeal the lower court's decision.

The criminal proceedings against Trump, except for the statewide one in Georgia related to the election process, concern pressure exerted on Secretary of State Brad Raffensperger, sufficient to secure the votes that the Republican candidate surpassed Biden and obtained for the presidential electors of the state of Georgia.⁴⁵ Trump was indicted on 14 August 2023, with

⁴³Special Counsel Jack Smith, Final report of the special counsel's investigation and prosecutions, op. cit., 137.

⁴⁴*Trump v. New York*, Application 24A666, 604 U.S. (2024), 9 January 2025: https://www.supremecourt.gov/DocketPDF/24/24A666/336760/20250107212856360_2025-01-07%20-%20Trump%20v.%20New%20York%20-%20Supreme%20Court%20Stay%20Application.pdf Accessed on 18.09.2025.

⁴⁵*The State of Georgia v. Donald J. Trump*, Fulton County Superior Court, 23SC188947 (indictment):

no progress made during 2024. This also involves prosecutor Fani Willis, who was dismissed from the proceedings at the end of 2024, and the related appeal of that decision (Hakim, Fausset, 2024).

Other charges were dismissed during this proceeding, and the effects of a Supreme Court decision on the issue of immunity for state-level proceedings were uncertain (Hasen, 2024). A New York judge in another criminal case imposed a sentence with an outcome already reported above.

The relevant aspects of the proceedings against Trump are based on circumstances that raise presidential criminal liability. The initial rejection by the court majority and the proposal by Trump's lawyers for a pre-impeachment rationale respected the criminal prosecution of the former president. Another aspect concerned the timing of the prejudicial period between the decision and the applicability of an immunity regime, including the appeal and the resolution of the dispute by the lower court.

In this regard, Trump emphasized that the second part of the Impeachment Judgment Clause stated:

“(...) Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law (...)”

presupposed that the Senate's need to approve articles of impeachment initiated by the House and by a former president

<https://www.fultonclerk.org/DocumentCenter/View/2092/MOTION-08-16-2023-151715-39070073-1C86D04A-9755-4D11-B5B2-0C36FAC21C70> Accessed on 18.09.2025.

who was under criminal proceedings.

Roberts rejected this interpretation, stating that “nevertheless” the indifference of an ordinary criminal proceeding that respected the outcome of the impeachment proceedings without adding the possibility of criminally pursuing a president who has not been impeached or even sanctioned by his own Senate. It was also emphasized that the use of the expression “afterwards” seems to indicate that, from a temporal perspective, the fact that the president is not subject to criminal proceedings after he has been removed from office makes the impeachment proceedings legally necessary.

The constitutional text does not specifically refer to the expression “afterwards,” which the founding fathers opted for, along with the “nevertheless” theory of separation, as well as the outcome for a political measure such as impeachment and the prosecution of ordinary criminal justice mechanisms.

Congress and the proceedings consider that criminal prosecution of the president proceeds without impeachment. The dissenting opinion of judge Sotomayor emphasizes that the majority opinion's passage and the limitation of presidential immunity are misplaced.

The liberal judge rejected the procedural argument that does not mitigate the extent of presidential immunity, recognized by the court itself. Pre-impeachment proceedings and conviction by the

Senate are necessary for ordinary criminal prosecution without limits or forms of immunity. The majority's reasoning from the court suggests that the president who impeached and subsequently sanctioned the Senate may also enjoy immunity for official acts in an ordinary criminal trial.

From a procedural perspective, the decision concerns the majority opinion as its final part. Roberts rejected the special counsel's argument for the recognition of presidential immunity and the standing to prosecute criminal cases as unnecessary, given that the procedural mechanisms and justifications effectively required the president to adequately defend the case. The special counsel deemed it sufficient to appeal the judgment in the case and to remedy the dismissal of a procedural objection invoking immunity from prosecution.

Roberts argued that the president's role is unique from a constitutional perspective, preventing the exercise of the relevant powers that influence pending proceedings susceptible to interference by powers that access the appeal of a dismissal by the trial court, at a stage prior to the conduct of a trial phase and the determination of the merits of one's own indictment.

Judge Barrett, in her concurring opinion, considered a general reconstruction of presidential immunity, which allowed the appeal of the decision denying recognition of this status. Judge Amy Coney Barrett, however, went further and proposed a

specific assessment of presidential criminal liability, excluding acts that are connected to fundamental constitutional duties, a two-way street.

The judge found that the general criminal law was applicable to the president, and the exceptions and derogations under presidential conduct were established under the issue, which deemed the effect of testing an adequate statutory interpretation irrelevant. A second avenue of escape is the assessment of the absence of interference with the exercise of the authority and functions of the executive branch for criminal prosecution of presidential acts. In this regard, Barrett stated that the object of the indictment is the difficult-to-resolve problems of attributing a sphere of presidential powers and the pressure exerted on Arizona representatives that were not attributable to powers recognized by the president under the Constitution.

Judge Barrett stated that the majority opinion was based on the position of an American architecture that the incumbent could challenge the decision of a lower-ranking judge and dismiss the defense of functional immunity in a proceeding that did not proceed to a hearing and a final determination on the merits of the question of his immunity.

Judge Jackson's dissenting opinion linked itself to a model of presidential liability that is alternative to individual criminal liability within a general framework of relationships between

government bodies.

The immunity regime in this case appears to be hybrid and also developed by the court, thus representing the exercise Jackson affirms in his position, that is, an intervention of judicial activism that is redefined by the question of respecting the lower levels of jurisdiction with respect to the arguments of its own parties. The case-by-case determination of conduct qualifies for immunity and excludes the scope of this regime positions the judiciary as a gatekeeper enforcing the president's legislation.

The problems that have arisen relate to the predictability of the conduct for which the president is held accountable in his judgment, as a fundamental rule of criminal law. This preventive control role is played by the courts, as is the institution of presidential immunity for every defendant in a criminal trial. Such a category of conduct is classified as unlawful by Congress and is immune from criminal prosecution which amounts to the reduction of Congress's role to that of the President for the courts which remain as the sole gatekeepers to ascertain the nature of presidential conduct.

Judge Jackson's Supreme Court orientation was based on the relationship between political bodies and the federal judiciary. The decision that the president is immune for official acts without Congress legitimizing and legislatively restricting such immunity demonstrates the existence of this type of immunity

for federal courts, which reserve the task of examining the conduct at issue and deciding during the pre-trial phase whether there is even the slightest connection between the conduct and the exercise of presidential powers.

This reconstructs a marginal dynamic for Congress in favor of hyper-presidentialism and a form of American government within a perspective that asserts, on the part of the Supreme Court, the applicability of presidential immunity to specific cases.⁴⁶

In *Trump v. Anderson* case, the conservative majority of the panel recognized that the federal Congress has given legislative effect to the Disqualification Clause according to §3 of the Fourteenth Amendment, reserving the right to *obiter* and the power to review such legislation effectively within the limits of the congruence and proportionality that find ample space in the jurisprudence of the enforcement powers according to the Fourteenth Amendment.⁴⁷

The Supreme Court's approach was based on disputes regarding the former president's liability in light of Congress's limitations

⁴⁶*Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837 (1984): <https://supreme.justia.com/cases/federal/us/467/837/> (Accessed on 18.09.2025) from the part of *Loper Bright Enterprises v. Raimondo Relentless, Inc. v. Department of Commerce*, 603 U.S. 369 (2024): https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf Accessed on 18.09.2025.

⁴⁷*Trump v. Anderson*, 601 U.S. 100 (2024): <https://supreme.justia.com/cases/federal/us/601/23-719/> Accessed on 18.09.2025; *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997): <https://supreme.justia.com/cases/federal/us/521/507/> Accessed on 18.09.2025.

on legislative action. Biden's presidency ended with an anomalous and difficult approach to amending the US Constitution. The interpretative approach did not allow for American democracy and the possibility of a second Trump term. The electoral objectives and the positions of former Supreme Court Judge Antonin Scalia⁴⁸ demonstrate that it is difficult to reconcile the decision in the Trump v. U.S. case.

The rationale behind the decision is that the president is immune from criminal prosecution for official acts that make the federal government function efficiently. The limits on political powers dictated by the Constitution and the relative efficiency of the government, as stated:

“(...) demonstrate the folly of interpreting constitutional provisions designed to establish 'a structure of government that would protect liberty (...) on the narrow-minded assumption that their sole purpose is to make the government run as efficiently as possible. Convenience and efficiency (...) “are not the primary objectives” of our constitutional framework (...)”.⁴⁹

For conservative judges, the next few years will be a continuous challenge and full of discussions regarding the content and how the Trump v. U.S. case ended.

48 Doing What He Said He Would: President Trump's Transparent, Principled and Consistent Process for Choosing a Supreme Court Nominee, 31 January 2017: <https://trumpwhitehouse.archives.gov/briefings-statements/said-president-trumps-transparent-principled-consistent-process-choosing-supreme-court-nominee/> Accessed on 18.09.2025.

49NLRB v. Noel Canning, 573 U.S. 513 (2014): <https://supreme.justia.com/cases/federal/us/573/513/> Accessed on 18.09.2025; Scalia J., Conc. Op., 11 (Slip Op.): <https://www.law.cornell.edu/supremecourt/text/14-556> Accessed on 18.09.2025.

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